

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

THOMAS KENDRICKS, III,

Case No. 16-CV-1041 (ADM/FLN)

Plaintiff,

v.

REPORT AND RECOMMENDATION

SANDRA HENRY; N. LIEREME; MIKE
CASTELLO; TAMMY WHERLEY;
MICHELLE SMITH; VINCENT KRANZ;
CRYSTAL HANSEN, and SHELLI MONIO,
all in their individual and official capacities,

Defendants.

Plaintiff Thomas Kendricks, III commenced this action by filing a complaint alleging violations of his constitutional rights. Kendricks did not pay the required filing fee for this case, but instead filed an application seeking leave to proceed *in forma pauperis*. See ECF No. 2. In an order dated May 16, 2016, this Court required Kendricks to pay an initial partial fee of \$8.77 within 20 days, *see* 28 U.S.C. § 1915(e)(2)(B)(ii), failing which it would be recommended that this action be dismissed without prejudice for failure to prosecute, *see* ECF No. 4 (citing Fed. R. Civ. P. 41(b)).

That deadline has now passed, and Kendricks has not paid the required initial partial filing fee. Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED that this action be DISMISSED WITHOUT PREJUDICE under Fed. R. Civ. P. 41(b) for failure to prosecute.

Dated: June 16, 2016

s/Franklin L. Noel
Franklin L. Noel
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c).

Under Advisement Date: This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.